MEGAPILLARS SDN. BHD.

v.

LOKE KWOK FOUR

HIGH COURT MALAYA, IPOH
TUAN KANG HWEE GEE J
[ORIGINATING SUMMONS NO: 24-537-1995]
12 MARCH 1996

LAND LAW: *Caveats - Who may lodge caveat - National Land Code 1965, s. 323(1).*

LAND LAW: *Caveats - Whether privity of contract with registered proprietor necessary to maintain caveat.*

LAND LAW: *Caveats - Test to be applied in determining whether to remove or extend caveat.*

LAND LAW: *Caveats - Whether caveator must have caveatable interest - Whether pecuniary interest sufficient.*

LAND LAW: *Caveats - Caveatable interest claimed through contract for sale - Whether contract must be enforceable.*

LAND LAW: *Sale of land - Conditional contract - Stipulation in contract - Legal position of stipulation - Whether condition precedent or an essential term of contract.*

LAND LAW: *Restraints on dealings - Caveats - Object of caveats - Whether failure to pursue claim timeously defeats privilege of having caveat lodged - Whether Court will assist applicant who delays pursuing claim - Whether inequitable.*

The plaintiff had lodged a private caveat ('the caveat') on the defendant's land ('the land') in 1991. In July 1995, the Registrar served a notification of removal in respect of the caveat. Consequently, the plaintiff filed the instant application by way of summons to extend the caveat.

The events leading up to the plaintiff's application were as follows. The defendant had entered into a sale & purchase agreement ('the S&P') for the sale of the land to some purchasers ('the purchasers') and had collected a deposit. There was a caveat on the land, and the purchasers were to pay the balance of the purchase price upon the removal of the caveat.

Subsequently, by a deed of assignment, the purchasers assigned their rights in the S&P to one M.K. Retnam ('MKR') on the understanding that MKR was to pay the balance of the purchase price. However, MKR paid half the

purchase price for half a share in the land leaving an unpaid balance for the remaining half. MKR, pursuant to his intention of developing a housing scheme ('the scheme'), then entered into an agreement ('the agreement') with the plaintiff whereby the land would be transferred to the plaintiff and held in trust for MKR in consideration of the plaintiff paying the balance of the purchase price. Up until the instant application, the plaintiff had not paid this balance; however, it claimed that it was ready, willing, and able to do so provided the defendant was able to transfer the land to it.

The plaintiff contended that by reason of the agreement with MKR, it would become co-purchasers upon paying the balance of the purchase price. Thus, its right to lodge, and thereafter to extend, the caveat was founded on its interest as a co-purchaser with MKR under s. 323(1)(a) of the National Land Code 1965 ('the NLC'). Alternatively, the plaintiff submitted that its right to maintain the caveat was possible under s. 323(1)(b) of the NLC by virtue of its position as a trustee for MKR.

The defendant refuted the plaintiff's claim on three grounds, namely, that: (i) there was no privity of contract between the plaintiff and the defendant. Without entering into a contract with the defendant, it was claimed that the plaintiff could have no registrable interest in the land; (ii) the agreement between the plaintiff and MKR was only a conditional agreement which could not confer a caveatable interest. Further to this, clause 19 of the agreement was referred to wherein it was stated that the agreement was only to take effect when the existing caveat had been removed and the registered owner had executed a valid and registrable memorandum of transfer; and (iii) the agreement was merely a joint-venture agreement to develop the scheme and, thus, the plaintiff's only interest would be in the profits to be derived thereof.

The issue before the Court was whether the caveat could rightfully be extended pursuant to the provisions of the NLC.

Held:

[1] Under s. 323(1) of the NLC, a private caveat may be entered by: (a) any person who has a right to the title or who has a registrable interest in the land; or (b) any person beneficially entitled under a trust affecting any such land or interest; or (c) the guardian or next friend of any minor claiming to be entitled as mentioned in (b).

[2] The plaintiff could never be a co-purchaser as it was only to hold the land in trust for MKR. The balance of the purchase price that the plaintiff had to pay was only to enable it to participate in the scheme.

[3] The person who was beneficially entitled under the trust was MKR and not the plaintiff. In any case, no trust could materialise until the land had been registered in the name of the plaintiff.

[4] Privity of contract with the registered owner has never been the criterion for determining whether a person is entitled to maintain a caveat.

[5] The test to be applied when deciding whether to remove or extend a caveat was stated in *Murugappa Chettiar Lakshmanan v. Lee Teck Mook*. The applicant must satisfy three tests. Firstly, the applicant must disclose a caveatable interest. Secondly, the evidence adduced to support the claim to a caveatable interest must disclose a serious question to be tried. Thirdly, the balance of convenience or justice must lie in favour of the caveat remaining pending the disposal of the suit.

[6] For a caveat to be lodged under s. 323 of the NLC, the caveator must have a caveatable interest and not merely a pecuniary interest.

[7] Where the caveatable interest is claimed through a contract for sale, the contract must be enforceable by the caveator.

[8] Where there is a stipulation in a contract to do something, that stipulation may be a condition precedent, ie, if the stipulation is not met, there is no contract between the parties. Alternatively, the stipulation may be an essential term of the contract, ie, if the stipulation is not met, the innocent party may treat himself as discharged from the contract and may also sue the other party.

[9] In the instant case, the agreement between the plaintiff and MKR was a conditional one. Thus, unless and until the events mentioned in clause 19 had taken place, there was no agreement between the plaintiff and MKR.

[10] The object of a caveat is similar to that of an interlocutory injunction; it is to provide interim protection to the interest of the applicant who can show that he has a genuine claim on that interest and that the *status quo* between the parties should be maintained pending the final disposal of the claim. It follows, therefore, that the applicant must pursue his claim timeously; a failure to do so will defeat the privilege of having a caveat lodged. Thus, where there has been an inordinate delay by the caveator in pursuing his claim, the Court will not assist him in maintaining his caveat to the detriment of the registered proprietor as this will be inequitable.

[11] Under s. 328(1) of the NLC, a private caveat is effective for six years. The plaintiff had lodged its caveat in 1991 and it could have commenced proceedings against the defendant during the currency of the caveat before being served with the notice of removal.

Obiter dicta:

Assuming that the agreement between the plaintiff and MKR was enforceable, the Court would have found the plaintiff to have a caveatable interest in the land.

[Plaintiff's application dismissed]

Cases referred to:

Murugappa Chettiar Lakshmanan & 3 Ors. v. Lee Teck Mook [1995] 1 AMR 958 ***(foll)***

Registrar of Titles, Johore v. Temenggong Securities Ltd [1976] 2 MLJ 44 ***(foll)***

Wong Kuan Tan v. Gambut Development Sdn. Bhd. [1984] 2 MLJ 113 ***(refd)***

Abdul Rahim v. Vallapai Shaik ***(refd)***

Ayer Itam Tin Dredging Malaysia Bhd. v. Y.C. Chin Enterprise Sdn. Bhd. [1994] 2 MLJ 754 ***(foll)***

Murugappa Chettier Lakshmanan & Ors. v. Lee Teck Mock [1995] 1 AMR 958 ***(foll)***

Trans Trust SPRL v. Danubian Trading Co. Ltd. [1952] 2 QB 297 ***(refd)***

Trans-Summit Sdn. Bhd. v. Chun Nyook Lin (p) [1996] 3 CLJ 502 ***(refd)***

Plimmer Bros v. St Maur [1906] NZLR ***(foll)***

Teo Ai Choo v. Leong Sze Hian [1982] 2 MLJ 12 ***(refd)***

*Hew Sook Ying v. Hiw Tin Hee [1992] 2 SCR 2571****(refd)***

Legislation referred to:

National Land Code 1965, ss. 323(1), (1)(a), (1)(b), 325, (2), 327, 328(1)

For the plaintiff - L.A. Gomes; M/s. L.A. Gomes & Co.
For the defendant - N.T. Rajah; M/s. Maxwell, Kenion, Cowdy & Jones

JUDGMENT

Kang Hwee Gee J:

By this summons the plaintiff is applying for an extension of a private caveat lodged by them on land held under CT. 13845 Lot 16151, Mukim Ulu Kinta, Perak under s. 326(2) of the National Land Code.

The application is supported by the affidavits of Chang Ah Meng (Encl. 2) and (Encl. 9) the managing director of plaintiff's company.

The plaintiffs claim that they have a registerable interest in the said land which was derived from an agreement (CAM-5 in Encl. 2) they entered with a company called M.K. Retnam Holdings Sdn. Bhd. They had on 18 April 1995 filed an action in the High Court to claim their interest from the defendant.

The interest was not acquired directly but in the following manner:

On 20 June 1975, the defendant Loke Kwok Four (the registered proprietor of the said land) entered into a sales and purchase agreement (CAM-2) with Liew Ah Chai and Chan Koi Chan, wherein the defendant agreed to sell the

said land to the latter for the sum of RM181,900. At the time of the agreement there was in existence a caveat on the land which was lodged by one Loke Kwok Seng which the contracting parties duly acknowledged in the said agreement. A sum of RM18,290 was paid to the defendant by the purchasers upon execution of the agreement. The balance of the purchase price of RM163,610 was to be paid by the purchasers only after the defendant had caused the caveat on the land to be removed.

Under clause 3 of the agreement it was provided that:

> 3. The purchasers may if they so desire invite third parties to join them in the purchase of the said land as joint purchasers with the purchasers herein and the vendor shall not interfere, prevent or stop the purchasers from so doing and the vendor shall transfer the said land to the purchasers and any additional purchasers their nominee or nominees upon receipt of the balance of the purchase price for the said land **provided** that in the event that any third parties shall have been taken in by the purchasers as additional joint purchasers notice of this shall be given within (30) days of such joining by the purchasers herein to the vendor.

By a deed of assignment dated 12 May 1978 the purchasers Liew Ah Chai and Chan Koi Chan assigned their rights and interests in the sales and Purchase agreement to M.K. Retnam Holdings Sdn. Bhd. for a consideration of RM1. Under the deed of assignment, M.K. Retnam agreed to pay the balance of the purchase price of RM163,610 due to the defendant Loke Kwok Four under the sales and purchase agreement of 20 June 1975. They also agreed to pay the purchasers a further sum of RM20,000 at the time they pay the defendant the sum of RM163,610 (which presumably would not be due before the removal of the caveat lodged by Loke Kwok Seng).

Upon acquiring the interest from Liew Ah Chai and Chan Koi Chan, M.K. Retnam (and probably upon a renegotiation) had paid the former a sum of RM91,450 being ½ the purchase price of the land as evidenced by the execution of the transfer Form 14A (Exh. CAM-4) for ½ share of the said land, leaving a balance of another RM91,000 for the other half share.

On 19 September 1990 the plaintiff entered into an agreement with M.K. Retnam Holdings Sdn. Bhd. Under this agreement M.K. Retnam agreed to transfer the said land to the plaintiff in consideration of the plaintiff paying the remainder of the purchase price of RM91,000 to the defendant.

To comprehend the nature of this agreement it in necessary to reproduce the recital in full as follows:

RECITAL

> 1. By an agreement dated 20 June, 1975 entered into between Loke Kwok Four of the one part and Messrs. Liew Ah Chye @ Liew Leong Hin and Chan Kooi Chan of the other part the latter purchased a piece of land held under

C.T. No. 13845 for Lot No. 16151 in the Mukim of Ulu Kinta measuring 22a 3r 18p (hereinafter called the 'said land') for the sum of RM181,900 (hereinafter called the 'principal agreement').

2. The first party has by a deed of assignment dated 12 May 1978 and entered into between Messrs. Liew Ah Chye and Liew Leong Hin and Chan Kooi Chan of the one part and Messr. M.K. Retnam Holdings Sdn. Bhd. of the other part wherein Liew Ah Chye @ Liew Leong Hin and Chan Kooi Chan assigned the rights, benefits and obligations of the principal agreement unto M.K. Retnam Holdings Sdn. Bhd.

3. The first party has to-date paid a total sum of RM91,450 and there still remains another sum of RM91,000.

4. The said land has been encumbered with caveats lodged by Chew Hoe Tuck and Loke Kwok Seong. Other caveats lodged on the said land by Ong Siew Teik, M.K. Retnam Holdings Sdn. Bhd. and by Ong Siew Teik Holdings Sdn. Bhd. have already expired.

5. The parties have the knowledge that on paying the balance sum of RM91,000 to the registered owner through his solicitors, Maxwell, Kenion, Cowdy & Jones the registered owner shall execute a valid and registerable memorandum of transfer to the first party or his nominee or nominees.

6. The first party shall see to it that the registered owner Loke Kwok Four or his solicitors be responsible to remove the caveats or any other encumbrances.

7. As security for the second party and in consideration of the second party contributing the RM91,000 the first party has agreed to have the said land transferred in favour of the second party. In such an event the second party hereby declares, and acknowledges that he holds the said land in trust for the first party.

8. The first party hereby agrees to have the said land transferred to the second party as a matter of expediency so that the second party shall be able to apply to a financial institution for bridging finance.

9. The first party is desirous of developing the said land into a housing in accordance with the plans as may be approved by the appropriate authority (hereinafter called 'the said housing scheme').

10. The first party in desirous of employing the second party and the second party has agreed to develop the said land into a housing scheme subject howsoever upon the terms and conditions hereinafter appearing.

What Exactly is the Plaintiff's Interest in the Agreement with M.K. Retnam?

It is clear to me under the agreement that,

1. The parties had assumed that on payment of this sum to the defendant, the defendant would execute a valid and registerable memorandum of transfer to M.K. Retnam or its nominee after all the caveats were removed. To-date the plaintiff had yet to pay the sum to the defendant and from the letter (Exh. CAM-1 in the plaintiff managing director's affidavit Encl. 2) the plaintiff was ready and willing and able to pay this sum provided the defendant was able to transfer the property to the plaintiff.

2. The said transfer was not intended to vest actual ownership on the plaintiff as under Recital 7 the plaintiff declared that they would only be holding the land on trust for M.K. Retnam and, under recital 8 that the purpose of the transfer was only for the expedience of allowing the plaintiff to use the land to obtain financing from financial institutions for the purpose of developing the said land into a housing scheme.

3. M.K. Retnam had intended to develop the land into a housing scheme and would employ the plaintiff as the contractor for M.K. Retnam in the housing project in accordance with the terms and conditions which follows in the said agreement (recitals 9 and 10).

Under s. 323(1) of the National Land Code a private caveat may be entered by:

a) any person or body claiming title to, or any registerable interest in, any alienated land or any right to such title or interest;

b) any person or body claiming to be beneficially entitled under any trust affecting any such land or interest, and

c) the guardian or next friend of any minor claiming to be entitled as mentioned in para. (b).

According to Counsel for the plaintiff by the agreement they entered into with M.K. Retnam, the plaintiff had become a co-purchaser of the defendant's land. This was so because under clause 3 of the original agreement (CAM-2) the purchasers could invite third parties to join them in the purchase of the said land and this right accrued to M.K. by the assignment (CAM-3). By their contribution of the purchase price of RM91,000 to M.K. the plaintiff would become co-purchaser. The right of the plaintiff to lodge the caveat and thereafter to its extension, Counsel contended, was founded on his interest as a co-purchaser with M. K. Retnam under s. 323(1)(a) of the Code. Further, Counsel submitted, the plaintiff could also derive his right to maintain the caveat

under s. 323(1)(b) by virtue of his position an a trustee for M.K. Retnam under the declaration of trust made by the latter under recital 7 of the agreement.

It is plain that the plaintiff could never be a co-purchaser as it is clear from the agreement that he was supposed to hold the land on trust for M.K. Retnam and the consideration of RM91,000 he was supposed to pay to the defendant was merely to enable him to participate in the joint venture. Neither could he be a person beneficially entitled under recital 7 as the person who would be beneficially entitled under the trust under s. 323(1)(b) would not be the plaintiff but M.K. Retnam. In any case no such trust on the property could materialise until the proprietorship of the land is eventually registered in the name of the plaintiff. The only claim to any interest that the plaintiff could lay claim to which merits consideration, in my view is the interest he claimed he had in the agreement he signed with M.K. Retnam.

The defendant put forth a number of reasons in his affidavits why he believed that the plaintiff did not have a caveatable interest in his land following which the plaintiff's managing director Chang Ah Meng deemed it necessary to reply to by further affidavit in (Encl. 9). At the hearings before me however, defendant's Counsel confined his submissions to three grounds to support his argument that the plaintiff did not have such interest in the defendant's land to entitle him to continue to maintain the caveat. For the sake of brevity, I will confine my considerations only on the three grounds raised by his Counsel which in my judgment will dispose of this application:

(i) there was no privity of contract between the plaintiff and the defendant. Without a contract with the defendant he submitted, the plaintiff could not have a registerable interest in the defendant's land.

(ii) the agreement with M.K. Retnam was only a conditional agreement which could not confer a caveatable interest on the defendant's land.

(iii) at best the said agreement was only a joint venture agreement to develop a housing scheme. The plaintiff's interest if any would be only in the profits to be derived from the scheme and not interest in the land.

I need not deliberate at length on the first ground (which clearly is bereft of merit) save to say that privity of contract with the registered owner has never been criterion for determining whether a person in entitled to maintain a caveat. The second and third grounds however are substantial and merit consideration.

Before I consider the merit of plaintiff's application, it is first necessary for me to state in brief the accepted tests that are laid down in the various authorities and invariably applied in all applications to remove or to extend caveat which I am bound to follow.

The Tests to be Applied:

The Court of Appeal in *Murugappa Chettiar Lakshmanan & 3 Ors. v. Lee Teck Mook* [1995] 1 AMR 958 has now formulated three stages that must be transcended in applications to remove a caveat (which should also apply to an application for extension as in the present case) in the following passage:

> First, whether the respondent, on the material set out by him in his application under s. 323(1) of the Code, has disclosed a caveatable interest. Secondly, if he has established a caveatable interest, then, whether the evidence he produced before the learned Judicial Commissioner in support of his claim to that caveatable interest discloses a serious question to be tried. Lastly, if the first two questions are resolved in the respondent's favour, then whether the balance of convenience, or more appropriately the balance of justice, lies in favour of the caveat remaining on the register pending the disposal of his suit. (per Gopal Sri Ram JCA).

Has the Plaintiff Disclosed a Caveatable Interest?

In support of his submission that the agreement between the plaintiff and M.K. Retnam was only a conditional agreement Counsel relied on clause 19 which read as follows:

> The provisions of this agreement shall only take effect when the existing caveats have been successfully removed and the registered owner Loke Kwok Four has executed a valid and registerable memorandum of transfer in favour of the first party or his nominee, the second party.

It is trite law that a caveator must have a caveatable interest in the land and not merely a pecuniary interest in it before he can lodge a caveat under s. 323 of the National Land Code (*Registrar of Titles, Johore v. Temenggong Securities Ltd.* [1976] 2 MLJ 44). Thus in *Wong Kuan Tan v. Gambut Development Sdn. Bhd.* [1984] 2 MLJ 113 a contractual right to an unpaid balance of the purchase price of the sale of land was held by the Federal Court to be incapable of creating a caveatable interest in land which would entitle the caveator to continue to maintain his caveat. Likewise, in the Supreme Court case of *Abdul Rahim v. Vallapai Shaik* (a case cited by defendant's Counsel) an agreement entered into by the three beneficiaries of the estate of the deceased to sell land which was conditional upon consent being given by the four other beneficiaries and upon the purchaser making the monthly instalments towards the discharge of charge of that land to the bank, was held to confer no caveatable interest on the purchaser.

Further, where that interest is claimed through a contract for the sale of land, the contract must be enforceable by the caveator and negotiations for a contract no matter how advanced is not capable of creating a caveatable interest in his favour (*Ayer Itam Tin Dredging Malaysia Bhd v. Y.C. Chin Enterprise Sdn. Bhd.* [1994] 2 MLJ 754). The point is well illustrated by the

following passage in the Court of Appeal case of *Murugappa Chettier Lakshmanan & Ors. v. Lee Teck Mook* [1995] 1 AMR 958 at p. 967:

> Until and unless a purchaser has an enforceable contract for the sale of land, he can lay no claim to the title to registered land. *A fortiori*, he has no interest that is capable of protection by the entry of a caveat. (see Gopal Sri Ram JCA).

To return now to the present application. An objective appraisal of clause 19 *(supra)* can only yield to the interpretation that the agreement with M.K. Retnam could only come into force after the caveats on the land had been removed and after Loke Kwok Four had executed registerable memorandum of transfer in favour of M.K. Retnam or its nominee, the plaintiff. What then is the legal position of such a contract?

In *Trans Trust S.P.R.L. v. Danubian Trading Co. Ltd.* [1952] 2 QB 297, 304, a contract for the sale of goods was made subject to a condition that the buyer was to open a confirmed letter of credit in favour of the seller. Denning LJ interpreted such a contract in the following words:

> What is the legal position of such a stipulation? Sometimes it is a condition precedent to the formulation of a contract, that is, it is a condition which must be fulfilled before any contract is concluded at all. In those cases the stipulation 'subject to the opening of a credit' is rather like a stipulation 'subject to contract'. If no credit is provided, there is no contract between the parties. In other cases, a contract is concluded and a stipulation for a credit is a condition which is an essential term of the contract. In those cases the provision of the credit is a condition precedent, not to the formation of the contract, but to the obligation of the seller to deliver the goods. If the buyer fails to provide the credit, the seller can treat himself as discharged from any further performance of the contract and can sue the buyer for damages for not providing the credit.

Applying Denning's interpretation to the present agreement, I am inclined to hold that unless and until the events mentioned in clause 19 take place there in no agreement between the plaintiff and M.K. Retnam which would give the plaintiff the right to any legal or equitable interest in the land. At the time when the plaintiff filed this application there was still in existence not only the caveat filed by Loke Kwok Seng, the defendant's brother, but also other caveats filed by some other parties which under the circumstances would prevent the defendant from executing a registerable memorandum of transfer in favour of M.K. Retnam or its nominee, the plaintiff. This is clear from the affidavit of Fong Fatt Khuan, the defendant's mother (Encl. 4) which was not disputed.

I would therefore agree with Counsel for the defendant that until the events take place the plaintiffs have no caveatable interest in the defendant's land.

In respect of the third ground that the plaintiff's interest was not in the land however, I have a different view. In support of his contention that the

plaintiff's interest was not in the land but merely in the joint venture agreement, defendant's Counsel relied on recitals 9 and 10 of the agreement. A joint venture agreement he submitted does not create a caveatable interest in land. As authority he cited a passage in the Court of Appeal case of *Trans-Summit Sdn. Bhd. v. Chun Nyook Lin (p)* [1995] 2 AMR 1889 at page 1894:

> In the proceedings before us, what interest does the respondent possess? It is not in the land. That has already been validly sold. Her interest really lies in the profits that her company hopes to gain from the joint venture agreement with the appellant, which is being challenged by the appellant. The civil suit testifies to this. As her interest is only monetary in nature, she has therefore no caveatable interest over the land. She cannot continue to have the private caveat lodged by her extended until after the disposal of the civil suit. (per Siti Norma Yaakob, JCA).

I have no reason to disagree with defendant Counsel that the plaintiff's interest in the agreement is primarily to develop the land into a housing scheme. This is clear from recitals and the other clauses in the agreement which clearly indicate the intention of the parties. But it is also clear that if the plaintiff did not acquire a registerable interest in the land they would not be able to enter into a joint venture to develop the land into a housing scheme. It would not therefore stand to reason to conclude that the plaintiff had no interest in the land. In construing whether the plaintiff had a caveatable interest, it would only be necessary to determine the plaintiff's immediate intention which was to acquire the land without having to look beyond their objective which was to enter into a joint development with M.K. Retnam.

I am therefore unable to agree with defendant counsel's contention that the plaintiff's interest in the agreement was not in the land but only in the joint venture agreement. Assuming that the agreement is not unenforceable as I have so held, I would have to find that the plaintiff had caveatable interest in the said land.

Timeous Commencement of Action:

There is another aspect of the plaintiff's application which I ought to consider which should more conveniently be considered under the balance of convenience test. It could however, stand as a separate ground on its own - contumelous delay to prosecute their claim against the defendant.

Under s. 328(1) of the National Land Code a private caveat is effective for six years unless sooner withdrawn under s. 325 or removed by the Registrar under s. 326 or by the Court under s. 327. The plaintiff did not disclose precisely when caveat 446/91 was entered by them. But from the prefix '91' it must have been lodged in 1991, some four years before he filed proceedings against the defendant on 18 August 1995 as disclosed in para. 22. However, in his further affidavit (Encl. 9) the managing director of the plaintiff company Chang Ah Meng deposed under para. 11 that:

11. We are unaware what other rights other caveatees may have, but the respondent has taken action to remove the other caveats and should be able to do so. The respondent has been delaying this matter since 5 September 1990 when they were given an undertaking by the solicitors for Messrs. M.K. Retnam Holdings Sdn. Bhd. for the payment of the sum of RM91,000 (Ringgit Malaysia Ninety One Thousand Only). The respondent's solicitors never replied these letters.

It is clear to me that the plaintiff could had they so wished commenced proceedings against the defendant during the currency of their caveat before being served with the notice of removal by the Registrar, given that they were aware that their interest in the land was affected by the delay of the defendant to remove the caveat as early as September 1990 as disclosed in para. 11 of the affidavit. The plaintiff did not act and remained inactive for some four years and chose to act only after being served with the notification of removal from the Registrar in Form 19 C on 27 July 1995. As a matter of fact they only filed an action against the defendant on 18 August 1995, a month after filing this application for extension of their caveat.

The object of a caveat like that of an interlocutory injunction is to provide interim protection to the interest of the applicant who can show that he has a genuine claim on that interest and that the *status quo* between the parties should be maintained pending the final disposal of his claim at a later date. It follows therefore the applicant must pursue his claim timeously in the Court and failure to do so will defeat the privilege of having his caveat being applied against the inalienable right of the registered proprietor to enjoy his land. Thus where there has been an inordinate delay on the part of the caveator to prosecute his claim against the caveatee, the Court will not lend its assistance to allow him to maintain his caveat to the detriment of the registered proprietor "as to prevent a man dealing with his property after such a long delay is so in inequitable." (per Stout CJ in the New Zealand case of *Plimmer Bros. v. St. Maur* [1906] NZLR cited and approved in the Singapore High Court in *Teo Ai Choo v. Leong Sze Hian* [1982] 2 MLJ 12, and see also *Hew Sook Ying v. Hiw Tin Hee* [1992] 2 SCR 2571.

I am of the view that in the present case the plaintiff's failure to act within the currency of the caveat that they had themselves lodged is crucial and in my judgment for the same reason as adumbrated is *Plimmer Bros.*, I ought not to grant the plaintiff's application for extension.

The plaintiff's application in dismissed with costs.

Reported by S Puvan